No. 82-45

Office - Supreme Court, U.S.
FILED
JUN 29 1982
CLERK

In The

SUPREME COURT OF THE UNITED STATES

_____ Term, 19__

GEORGE MILLER,

Petitioner,

vs.

SUPREME COURT OF PENNSYLVANIA, E.D., et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, E.D., et al.

George Miller,
Petitioner
In Propria Persona
514 West Main Street
Lock Haven, Pennsylvania 17745
Telephone: (717) 748-2768

QUESTIONS PRESENTED

I. Re the appeal before the Pa. Supreme Court, docketed to No. 642 E.D. Misc. Docket 1981 from the Pa. Superior Court (docketed to No. 1210 Philadelphia, 1980):

1. Whether the Special Prosecutor, arbitrarily, capriciously, prejudicially and unconstitutionally, under the FIRST, NINTH, TENTH, FOURTEENTH Amendments and ARTICLE IV, Secs. 2 and 4 of the United States Constitution, unlawfully, without factual and legal basis, required your Petitioner, the affiant-private prosecutor, to submit the aforesaid Private Criminal Complaint to him for his approval or disapproval, which precluded said Complainant from filing his Complaint with the issuing authority or District Justice (Court of first instance) for disposition by preliminary hearing.

2. Whether the lower court Judge of

Clinton County Court of Common Pleas in review (docketed to No. 242-79) of the aforesaid decision by the Special Prosecutor, arbitrarily, capriciously, prejudicially and unconstitutionally, under the said FIRST, NINTH, TENTH, FOURTEENTH Amendments and ARTICLE IV, Secs. 2 and 4 of the Federal Constitution, unlawfully, without factual and legal basis, refused to approve the said Complaints, or to issue process as a summons or warrant.

II. WHETHER PENNSYLVANIA RULE OF CRIMINAL PROCEDURE 133(B) PRIVATE COMPLAINTS IS UNCONSTITUTIONAL (Rule 105 adopted Jan. 31, 1970, effective May 1, 1970; renumbered as Rule 133 and amended Sept. 18, 1973, effective Jan. 1, 1974; amended Jan. 23, 1975, effective Sept. 1, 1975).

A. Whether this Rule violates the First Amendment of the United States Constitution, since:

(1) This amendment is embodied in the Fourteenth Amendment, and put in force by Supreme Court decisions holding that the Fourteenth made the guarantees of the First Amendment binding on the individual states.

(2) And whether the right of the citizen to petition the power of government for redress of grievances is a right which cannot lawfully be infringed, by departments of government, or by the state, which includes access to the courts, as a suitor, in a civil proceeding, and as an affiant or informant, in a criminal complaint, urging remedies for reparation of private or public wrongs. (emphasis added)

(3) And whether "prosecutorial discretion" can be exercised in prohibiting the filing of a private criminal complaint before a magistrate or District Justice (Court of first instance), when a complaint does not

initiate prosecution, but only a series of steps following the filing of a complaint, which commences prosecution. (emphasis added)

B. Whether this Rule violates the Fourteenth Amendment, Section 1, of the United States Constitution.

C. Whether this Rule violates Article IV, Sec. 2, of the United States Constitution.

(1) Whether every citizen has a right to efficient performance of all governmental functions in the field of criminal law enforcement which entitles him personally to assume a task which has been performed inadequately, by a public prosecutor, in order to cope with the serious threat to society posed by a public prosecutor's improper, or arbitrary, action or inaction. 65 The Yale Law Journal, at pages 224 and 227.

(2) Whether most states find

authority for permitting prosecution in the inherent power of the court to administer justice. 65 The Yale Law Journal, at page 219.

D. Whether this Rule violates the Ninth Amendment of the United States Constitution.

(1) Whether the people, as the sovereign power, have the inherent right to instigate prosecution, by filing Private Criminal Complaints, if duly constituted authorities, in supreme neglect of their solemn responsibilities and in defiance of their pledged duties, fail to protect the people from lawlessness, by enforcing the law.

E. Whether this Rule violates the Tenth Amendment of the United States Constitution.

F. Whether this Rule was adopted and promulgated by the Pennsylvania Supreme Court, empowered under Article V, Section 10(c) of

the Pennsylvania Constitution, to prescribe general rules governing practice, procedure and the conduct of all courts under the unified judicial system of Pennsylvania, in conflict with, or in violation of, the United States Constitution.

(1) Though it is competent for courts to make and enforce rules regulating the practice of cases pending before them, either by constitutional provisions or by statute or by inherent power to prescribe such rules of procedure or practice as may be necessary for the proper administration of justice, to be valid, a rule must be reasonable. Rules must not be in conflict with constitutional provisions. 20 Am Jur 2d, Rule-making Secs. 82 and 84. (emphasis added)

(2) Rules of court properly promulgated, have the force of law, and are tantamount in this respect to rules incorporated

in statutes. 20 Am Jur 2d, Sec. 85. (emphasis added)

(3) Since the United States Constitution is intended for the observance of government and the judges are sworn to support its provisions, the courts are not at liberty to overlook or disregard its commands, or countenance evasions thereof. When it is clear that a statute (or a rule, in the instant case, having the force of law, and tantamount to a statute) or ordinance transgresses the authority vested in a legislative body, it is the duty of the courts to declare the act unconstitutional, because they cannot shrink from it without violating their oaths of office. (emphasis added)

(4) This duty of the courts to maintain the constitution as the fundamental law is clear, imperative, and unceasing, and cannot be evaded. Any other course would lead

to the destruction of the constitution.

(5) The United States Supreme Court has declared that it is the duty of courts to be watchful for the constitutional rights of the citizens and against stealthy encroachments thereon. Their motto should be obsta principiis (resist the beginnings). 16 Am Jur 2d, Constitutional Law Secs. 155 and 157. (emphasis added)

(6) "Equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the Fourteenth Amendment to the Federal Constitution, when the courts are open to them on the same condition as to others in like circumstances, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs." (emphasis added) 16 Am Jur 2d, Const. Law Sec. 791.

G. Whether this Rule violates Article IV, Section 4, of the United States Constitution.

(1) A "republican form of government." has been defined as one which derives all its powers from the people and which is administered by persons holding their offices for a limited period or during good behavior.

(2) The court held that the doctrine of separation of powers is an inherent and integral element of a republican form of government, and separation of powers, as an element of the republican form of government, is expressly guaranteed to states by Article IV, Section 4, of the Constitution of the United States. Vansickle V Shanahan, 212 Kan 426, 511 P 2d 223.

(3) The State Supreme Court, through Rule 133(B), transferred the power of the judiciary to the prosecuting attorney, as

representative of the executive branch of government, delegating "judicial discretion," to the District Attorney to approve or disapprove a Private Criminal Complaint, to determine whether there is "probable cause" or a "prima facie" case, in violation of separation of powers, under a republican form of government, as guaranteed by the Federal Constitution. (emphasis added)

PARTIES TO THE PROCEEDING

Petitioner

GEORGE MILLER

Respondents

SUPREME COURT OF PENNSYLVANIA, E.D., et al.

SUPERIOR COURT OF PENNSYLVANIA, PHILADELPHIA DISTRICT

ALEXANDER F. BARBIERI, ESQUIRE
COURT ADMINISTRATOR OF PENNSYLVANIA

ATTORNEY GENERAL OF PENNSYLVANIA
LeROY S. ZIMMERMAN, ESQUIRE

JOHN F. COWLEY, ESQUIRE
SPECIAL PROSECUTOR

FREDERICK D. LINGLE, ESQUIRE
DISTRICT ATTORNEY
(Clinton County, Pennsylvania)

TABLE OF CONTENTS

	Page
PETITION FOR WRIT OF CERTIORARI	1-2
PARTIES TO THE PROCEEDING	xi
QUESTIONS PRESENTED FOR REVIEW	i-x
STATEMENT OF GROUNDS FOR INVOKING JURUSDICTION	3
JURISDICTION	3
THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS WHICH THE CASES INVOLVE (pursuant to Rule 21(.1)(f))	1-6
RULE INVOLVED	7
STATEMENT OF THE CASE	8-23
CONCLUSION	23

APPENDIX

A - Order of the Supreme Court of Pennsylvania Denying Petition for Allowance of Appeal (Docket No. 642 E.D. Misc. Docket 1981) ---------- 1a-2a

B - Order of the Supreme Court of Pennsylvania Denying Petition for Allowance of Appeal (Docket No. 52 E.D. Allocatur Docket 1982) -------- 3a-4a

C - Rule Involved (Pennsylvania Rule of Criminal Procedure No. 133(B)-5a-6a

Table of Contents Page

SIGNATURE AND VERIFICATION ---------- 23

AFFIDAVIT OF SERVICE ---------- 24-27

CASES CITED

Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509 12 L Ed. 723 (1959) ---------- 20 & 29

Commonwealth v. William R. Eisemann, et al., Pa. Super. 41[illegible], A. 2d 591 --- 10-12

Commonwealth v. McCants, 450 Pa. 245, 299 A. 2d 283 (1973) ---------- 20 & 22

Commonwealth v. Miller, Pa. Super., 405 A. 2d 928 (1979) ---------- 16

Johnson v. MacCoy, 1960, 278 F. 2d 37, U.S. Ct. of app. (9th Cir.) --------- 21-22

Muse-Art Corp. v. City of Philadelphia, 95 A. 2d 542 ---------- 12

Petition of Allentown Osteo Hospital 67 D. & C. 2d 790 (1974) ---------- 18

Petition of Piscanio, Pa. Super. 344 A. 2d 658 (1975) ---------- 10,15,16,17,18

Schline v. Kine, 301 Pa. 586, 152 A. 845--12

Vansickle v. Shanahan, 212 Kan 426, 511 P 2d 223 ---------- ix

Table of Contents

Page

STATUTES CITED

Jurisdiction, 28 U.S.C.A. Sec. 1257 (3), June 25, 1948, (c). 646, 62 Stat. 929, as amended July 29, 1970, Pub. L. 91-358, Title 1, Sec. 172(a) (1), 94 Stat. 590 ---------- 3

RULES CITED

Rule No. 17(.1)(b)(c) of the Supreme Court of the United States ---------- 2,3

Rule No. 19(.4) of the U.S. Supreme Ct. 2

Pa. Rule of Appellate Procedure 1701(a) 17

Pa. R.A.P. 1701(b)(3)(ii) ---------- 18

Pa. Rule of Criminal Procedure No. 133(B), PP ii,ix,17

Pa. R. Crim. P. No. 133(B)(1) -------- 9,14

Pa. R. Crim. P. No. 133(B)(3)(i)(ii) ---- 9

Pa. R. Crim. P. No. 133(B)(3)(ii) 10,11,12,16

CONSTITUTION

Pa. Constitution - Art. V, Sec. 10(c) (empowering Pa. Supreme Court with Rule-making powers) ---------- v,5

United States Constitution - First Amend-

Table of Contents

Page

ment ---------- i,ii,3,4,11,13,14,17,19

U.S. Constitution - 9th Amendment
PP i,ii,v,3,5,13

U.S. Const. - 10th Amendment --i,ii,v,3,5,13

U.S. Const. - 14th Amendment
PP i,ii,iii,iv,vii,3,4,11,13,14,17,19

U.S. Const. - Article IV, Secs. 2 and 4;
PP i,ii,iv,viii,ix,3,5,6,11,13,14,17,19

Doctrine of Separation of Powers ------- ix

OTHER AUTHORITIES CITED

16 Am Jur 2d, Constitutional Law
Secs. 155 & 157 ---------- viii,12

16 Am Jur 2d, Constitutional Law
Sec. 791 ---------- viii

20 Am Jur 2d, Rulemaking Secs. 82,
84 and 85 ---------- vi & vii

65 The Yale Law Journal ---------- iv & v

Allocaturs:

Orders of Pa. Supreme Court (docketed
to Nos. 52 E.D. Allocatur Docket 1982;
and 642 E.D. Misc. Docket 1980 in two
"Petitions For Allowance of Appeals"
re: Commonwealth v. J. Michael Williamson, Esquire ---------- 2,8,14,19

No.

SUPREME COURT OF THE UNITED STATES

_____ Term, 1982

GEORGE MILLER,

Petitioner,

vs.

SUPREME COURT OF PENNSYLVANIA, E.D., et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, E.D., et al.

1. Your Petitioner is GEORGE MILLER acting In Propria Persona.

2. Petitioner seeks to have reviewed an Order of the Supreme Court of Pennsylvania, Eastern District, filed in the records of said Court on the 25th day of March, 1982, docketed to No. 642 E.D. Misc. Docket 1981 (RE: Commonwealth of Pennsylvania V. J. Michael Williamson, Esquire; Petition of: George Miller); and an Order of the said Court filed in the records of said Court on the 25th day of March, 1982, docketed to No. 52 E.D. Allocatur Docket 1982 (RE: Commonwealth of Pennsylvania V. J. Michael Williamson, Esquire; Petition of: George Miller). (underdelineation supplied)

3. Your Petitioner requests review of the aforementioned two cases on certiorari before this Honorable Court, pursuant to Rule No. 19 (.4), because they involve identical or closely related questions.

Constitution.

STATEMENT OF GROUNDS
FOR INVOKING JURISDICTION

4. This petition is presented for review of Orders of a State Court of last resort which has decided a federal question, in a way in conflict with the decision of another state court of last resort or of a federal Court of Appeals; and which has decided a federal question in a way in conflict with applicable decisions of this Court, in violation of the FIRST, NINTH, TENTH AND FOURTEENTH AMENDMENTS and ARTICLE IV, SECS. 2 and 4 of the United States Constitution.

JURISDICTION

5. This petition is presented under and pursuant to 28 U.S.C.A. Sec. 1257(3), June 25, 1948,(c). 646, 62 Stat. 929, as amended July 29, 1970, Pub. L. 91-358, Title 1, Sec. 172 (a)(1), 84 Stat. 590 and Rule No. 17(.1)(b)(c).

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS WHICH THE CASES INVOLVE (pursuant to Rule 21(.1)(f))

6. II(A) at page 4: The First Amendment of the United States Constitution.

It states:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances." (underscoring supplied)

7. II(B) at page 5: The Fourteenth Amendment, Section 1, of the United States Constitution.

It states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis added)

8. II(C) at page 5: Article IV, Section 2, of the United States Constitution.

It states:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

9. II(D) at page 6: The Ninth Amendment of the United States Constitution.

It states:

"The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

10. II(E) at page 6: The Tenth Amendment of the United States Constitution.

It states:

"The powers not delegated to the United States Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." (emphasis added) See: II(C)(1)(2) and II(D)(1), supra.

11. II(F) at pages 6 and 7: Article V, Section 10(c) of the Pennsylvania Constitution.

It states:

"The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitations or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions." (emphasis added)

12. II(G) at page 9: Article IV, Section 4, of the United States Constitution.

It states:

"The United States shall guarantee to every State in this Union a Republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the legislature cannot be convened) against domestic violence."

RULE INVOLVED

The following rule which is involved in this case is set forth in Appendix C infra:

Pennsylvania Rule of Criminal Procedure No. 133(B) entitled "Private Complaints"

Pa. R. Crim. P. 133(B)(1)

Pa. R. Crim. P. 133(B)(3)(i)

Pa. R. Crim. P. 133(B)(3)(ii)

Pa. R. Crim. P. 133(B)(3)(iii)

STATEMENT OF THE CASE

13. Re the appeal docketed in the Pa. Supreme Court, Philadelphia, Pa., to No. 642 E.D. Misc. Docket, this case commenced September 21, 1979 when your Petitioner attempted to file a private Criminal Complaint against J. Michael Williamson, former District Attorney of Clinton County, Lock Haven, Penna., before Carl R. Hamberger, District Justice (Court of first instance, though not of record), charging the defendant with four criminal offenses, viz. (1) Tampering With Public Records Or Information (altering a Grand Jury indictment), section 4911(a)(1)(2)(3), (2) Obstructing Administration of Law Or Other Governmental Function, section 5101, (3) Official Oppression, section 5301 and (4) Criminal Conspiracy, section 903, all contrary to the Act of 1972, No. 334, of the Assembly of Pennsylvania. The District Justice refused to accept complaint for filing. Complaint

was then submitted to the District Attorney of Clinton County, Pa., Martin A. Flayhart, according to Pennsylvania Rule of Criminal Procedure No. 133(B)(1), providing in pertinent part:

> "When the affiant is not a police officer as defined in Rule 51(C) and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to the attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay."

Attorney Flayhart disqualified himself and asked the Clinton County Court of Common Pleas of Pa. to appoint a special prosecutor to review the complaint. JOHN F. COWLEY, Esquire was then appointed as Special Prosecutor by the lower court, aforesaid, to approve or disapprove the said complaint, pursuant to Pennsylvania Rule of Criminal Procedure No. 133(B)(3)(i)(ii), providing in pertinent part:

> "(3) If the attorney for the Commonwealth

(i) approves the complaint, he shall indicate his decision on the complaint form and transmit it to the issuing authority (District Justice).

(ii) disapproves the complaint, he shall state his reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval."

He disapproved it. Your Petitioner then submitted complaint to said lower court, to issue process, as a Summons or Warrant, based on said complaint, in a court case. Judge Carson V. Brown, President of said Court, disqualified himself and Judge Harold B. Fink was assigned as Specially Presiding Judge to "review" or "screen" the complaint, pursuant to Pennsylvania Rule of Criminal Procedure No. 133(B)(3)(ii) and as cited in Petition of Piscanio, Pa. Super. 344 A. 2d 658 (1975) and in Commonwealth v. William R. Eisemann, et al, Pa. Super., 419, A. 2d 591, quoting Petition of Piscanio, supra. In the Piscanio Appeal, supra, the Court held:

"Rule 133(B)(3)(ii) simply allows the complainant to file the disapproved complaint with a judge of a court of common pleas for approval or disapproval. The court is not required by this rule to grant a hearing; the additional procedure merely gives the private prosecutor the opportunity to have his complaint reviewed following an adverse decision by the district attorney. The lower court affirmed the decision of the Special Prosecu-
* *April 29, 1980
tor. Your Petitioner then appealed to the Superior Court of Pennsylvania, sitting at
* *May 19, 1980
Philadelphia, Pa., for the Eastern District, which appeal was docketed to No. 1210 Phila., 1980. In written brief, and in oral argument, your Petitioner raised the said FIRST, FOURTEENTH Amendments and ARTICLE IV, Section 4, of the United States Constitution, said Federal questions, before that appellate court. In Commonwealth of Pennsylvania v. William R.

Eisemann, et al, Pa. Super., 419 A.2d 591, the Court held:

> "This discretionary power of the District Attorney in determining whether prosecution shall be commenced or maintained may well depend on matters of policy wholly separate and apart from the existence or non-existence of probable cause," adding, "assuming, without deciding, that appellate review is available from decisions by the District Attorney and a trial judge who refuse to approve a private, criminal complaint."

Said appeal was pursuant to disapproval of a complaint by the judge under said Pa. Rule of Criminal Procedure No. 133(B)(3)(ii). In accordance with 16 Am Jur 2d, Constitutional Law Sec. 155,

> "there rests upon the courts the affirmative duty of refusing to sustain that which by the constitution has been declared repugnant to public policy."

In Muse-Art Corp. v. City of Philadelphia, 95 A.2d 542, the state court of last resort, the Supreme Court of Pa., citing Schline v. Kine, 301 Pa. 586, 152 A. 845, held:

"Matters not raised by appellant in trial court will not be considered, except where question of jurisdiction or public policy is involved, even though question raised is a constitutional one."

The said Superior Court affirmed the decision * *on October 30, 1981
of the lower court, stating that the special prosecutor did not abuse his discretion in disapproving the private criminal complaint and the lower court judge did not abuse his discretion, in reviewing the action taken by the special prosecutor. The ** **J. 265/1981 lower appellate court avoided addressing the federal questions. An Allocatur or Petition For Allowance of Appeal from the said Superior Court to the said Supreme Court
was then filed, docketed to No. 642 E.D. Misc. *** ***on November 30, 1981
Docket 1981. Petitioner raised federal questions as the FIRST, NINTH, TENTH and FOURTEENTH Amendments and ARTICLE IV, Section 2, under the Constitution of the United States. Petition was denied, per curiam, by an Order entered by that Court on March 25, 1982. (Emphasis added)

14. Re the appeal docketed in the said Pa. Supreme Court to No. 52 E.D. Allocatur Docket 1982, this case commenced on December 18, 1980 when your Petitioner attempted to file Private Criminal Complaints against the said J. Michael Williamson, Esquire, before the said District Justice, charging defendant with Obstructing Administration of Law Or Other Governmental Function, section 5101, of the Act of 1972, No. 334 of the State of Pennsylvania. Your Petitioner raised the Federal questions of the First and Fourteenth Amendments, and Article IV, Sec. 4 of the United States Constitution, before the said District Justice, Carl R. Hamberger, in arguing for filing of the said complaints before Hamberger, the issuing authority, but the District Justice refused to accept the filing of same until approved by the District Attorney, according to the said Pennsylvania Rule of Criminal Procedure No. 133(B)(1). Com-

plaints were then submitted to the District Attorney for his review, along with a five page brief, citing law and authorities, disputing "prosecutorial discretion" by a public prosecutor, to approve or disapprove private criminal complaints, before they can be filed in Court and institution of prosecution. The District Attorney disapproved the complaints. Your Petitioner then submitted said complaints to the said Court of Common Pleas of Clinton County, Pa., docketed to No. 292-1980, for issuance of legal process, by Summons or Warrant, based upon said Complaints. [1] & [2]

---

[1] On July 23, 1980, the lower court Judge Jay W. Myers, in response to submission of Petitioner's request for issuance of process, in the first set of complaints vs. J. Michael Williamson, Esq., identical to the above second set of complaints vs. said defendant (complaints were re-filed), because the District Attorney disapproved them, the Court refused to grant Petitioner a hearing.

[2] In the Piscanio Appeal, 235 Pa. Superior Ct. 490, 495-96, n.5, 344 A. 2d 658, 661, n.5

(1975), the Court said that "Rule 133 (B) (3) (ii) simply allows the complainant to file the disapproved complaint with a judge of a court of common pleas for approval or disapproval. The court is not required by this rule to grant a hearing.

Judge Carson V. Brown, President Judge, of the said lower court, removed himself on December 31, 1980, regarding the submission of the re-filed complaints, and again, the Honorable Jay W. Myers was assigned to approve or disapprove them. On February 5, 1981, he entered an Order (docketed to No. 292-1980, in lower court), concluding "that the same lack any legal basis for prosecution," citing: Commonwealth V. Miller, Pa.Super., 405 A.2d 928 (1979); and Petition of Piscanio, Pa.Super. 344 A. 2d 658 (1975). Your Petitioner then filed, simultaneously, a "Notice of Appeal" of the judgment, to the Pa. Superior Court, a "Petition For Reconsideration Of Order" and "Rule to Show Cause" in the lower court (including copy of "Notice

* *February 20, 1981

of Appeal"). In the Petition For Reconsideration, your Petitioner raised federal questions under the FIRST AND FOURTEENTH Amendments, and ARTICLE IV of the United States Constitution. The lower court judge dismissed the said Petition For Reconsideration,[3] in a "MEMORANDUM" and OPINION entered on March 5, 1981, evading the federal questions, though stating:

> "We decline to reconsider our Order for the following reasons: (1) there is no statute or rule which authorizes reconsideration of an Order of this nature;(2) the petition for reconsideration fails to set forth any additional matter which has not already been considered by the Court; and (3) we are precluded by Pa. R.A.P. 1701(a) (Pennsylvania Rules of Appellate Procedure) from proceeding further at this point, since Petitioner has appealed our February 5, 1981 Order to the Pennsylvania Superior Court;" and "it must be stressed that a private prosecutor, even as a victim, 'has no legitimate interest - other than as a member of the general public - in seeing a violator of the law brought to justice by the Commonwealth and punished for his misdeeds," citing the Piscanio Appeal, at 661, supra, adding, "the Court is not required by (Rule 133(B)) to grant a hearing; the additional procedure merely gives the private prosecutor the opportunity to have his complaint reviewed follow-

ing an adverse decision by the district attorney. In this circumstance no hearing should be available, citing Piscanio, at 661, fn 5. (Emphasis added by Court)

---

[3]Petition for Reconsideration of Order was filed pursuant to Pa. R.A.P. No. 1701(b)(3)(ii), which states: "After an appeal is taken or a petition for allowance of appeal is filed in a matter or review of a quasijudicial order is sought, the lower court or other government unit may: (3) grant reconsideration of the order which is the subject of the appeal or petition, if: (i) an application for reconsideration of the order is filed in the lower court or other government unit within the time provided or prescribed by law; and (ii) an order expressly granting reconsideration of such prior order is filed in the lower court or other government unit within the time prescribed by these rules for the filing of a notice of appeal, petition for allowance of appeal or petition for review of a quasijudicial order with respect to such prior order, or within any shorter time provided or prescribed by law for the granting of reconsideration;" and in accordance with ruling in Petition of Allentown Osteo Hospital 67 D. & C. 2d 790 (1974), regarding seeking oral argument on petition, by "Rule to Show Cause" based on submitted petition.

Your Petitioner, in his appeal of Judge Myer's dismissal, to the Pa. Superior Court (docketed to No. 409 Philadelphia, 1981), in his written

brief, and in oral argument,before said Court, raised federal questions, which were: The FIRST, FOURTEENTH Amendments and ARTICLE IV of the United States Constitution. The Superior Court affirmed the Order of the lower court, avoided addressing the federal questions, and stated: "Appellant has previously litigated the same question before this Court. The Court of Common Pleas and this Court held that Mr. Williamson had acted completely within his authority and in accordance with the law, and that there had been no abuse of discretion." Judgment was filed on December 29, 1981. Your Petitioner then filed a "Petition For Allowance Of Appeal From Superior To Supreme Court," docketed to No. 52 E.D. Allocatur Docket 1982, on February 4, 1982, in which he raised as federal questions, the FIRST, NINTH, TENTH and FOURTEENTH Amendments, and ARTICLE IV, Sec. 2, of the United States Constitution. Petition

** **at pages 1 & 2

was denied by Order entered on March 25, 1982.

15. The decisions of the Supreme Court of Pennsylvania, the state court of last resort, in the foregoing two cases, which Petitioner seeks to have reviewed, which affirmed the judgments of the Pa. Superior Court, in the said cases, are in direct conflict with decisions of another state court of last resort or of a federal Court of appeals. Because of the reasons and authorities set forth below, it is believed that the decisions hereby sought to be reviewed are erroneous and that the conflicting decisions are correct and should be approved by this Court as the controlling law for the State of Pennsylvania: (1) Commonwealth V. McCants, 450 Pa. 245, 299 A. 2d 283 (1973).

> "It is the duty of the reviewing court to examine not only whether probable cause existed, but also, whether a neutral and detached magistrate made the probable cause determination."

(2) Aguilar V. Texas, 378 U.S. 108, 84 S. Ct.

. 1509, 12 L Ed. 2d 723 (1959).

"Although the reviewing court will pay substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform his 'neutral and detached' function and not serve as a rubber stamp for the police."

(3) Johnson V. MacCoy, 1960, 278 F. 2d 37,

U.S. Ct. of app. (9th Cir.).

(i) "There is no distinction between who may present a possible crime to a magistrate for his consideration based solely upon the consideration of whether the crime is a felony or a misdemeanor."

(ii) "California statute requiring district attorney to institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses places no duty upon him alone to seek the charge or produce evidence sufficient to constitute reasonable suspicion."

(iii) "The California Penal and Government Codes while authorizing the district attorney to present or lay a complaint before a magistrate as to a possible felony do not exclude or prohibit the same act when performed by a private citizen.

(iv) "The opinion suggests that if the district attorney does not have sole authority to institute proceedings to attempt to convince a magistrate a crime has been committed, citizens will be falsely accused

and deprived of their liberties. We cannot agree. The decision is not for a district attorney and only for a district attorney to make. We think this is precisely why all persons desiring a complaint to issue must present their evidence before a non-prosecuting agency, i.e., a magistrate. He previews the facts and exercises his judgment. If it was solely the function of the district attorney to determine what the magistrate may consider, the final veto power would be placed in the hands of a prosecuting officer, rather than a judicial officer. This is contrary to the practice and theory of our system, including the grand jury system." (underscoring supplied)

WHEREFORE, petitioner requests this Court to grant a writ of certiorari or other appropriate writ and to enter its order quashing the decisions and orders hereby sought to be reviewed, approving the decision of the Pa. Supreme Court in Commonwealth V. McCants, the U.S. Supreme Court in Aguilar V. Texas and the United States Court of Appeals for the 9th Circuit, in Johnson V. MacCoy, as the correct decisions, and staying enforcement of said decisions and orders of the Pa. Supreme Court, pending final

determination of same in this proceeding, and granting such other and further relief as shall seem right and proper to the Court.

June 20, 1982
Date

George Miller
Petitioner
In Propria Persona
514 West Main Street
Lock Haven, Pa. 17745
Telephone: (717) - 748-2768

COMMONWEALTH OF PENNA. :
: SS:
COUNTY OF Centre :

GEORGE MILLER, being duly sworn according to law deposes and says that the facts in the foregoing "PETITION FOR WRIT OF CERTIORARI" to the Pennsylvania Supreme Court, In The UNITED STATES SUPREME COURT, ar true and correct to the best of his knowledge, information and belief.

George Miller

Sworn to and subscribed before me

this 21st day of June 1982.

Mary Ann Bjalm

MARY ANN BJALM, Notary Public
State College, Centre County, Pa.
My Commission Expires March 25, 1985

GEORGE MILLER,)
Petitioner, :
)
V. : No._____
)
SUPREME COURT OF : Term_____
PENNSYLVANIA, E.D.,)
et al., :
Respondents.)

ON WRIT OF CERTERIORARI TO THE
UNITED STATES SUPREME COURT

AFFIDAVIT OF SERVICE

GEORGE MILLER, being duly sworn according to law deposes and says that on June 23, 1982, three copies of the "PETITION FOR WRIT OF

CERTIORARI" to the Supreme Court of Pennsylvania, In The UNITED STATES SUPREME COURT, filed on June 23, 1982, by the Petitioner, as captioned in these proceedings, versus the SUPREME COURT OF PENNSYLVANIA, E.D., et al., Respondents, were served upon the Prothonotary of the Pennsylvania Supreme Court, by depositing the same thereof in the United States Mails, postage prepaid and addressed to his office at 468 City Hall, Philadelphia, Pa. 19107; and three copies of the said "Petition" were served upon ALEXANDER F. BARBIERI, Esquire, COURT ADMINISTRATOR OF PENNSYLVANIA, by depositing the same thereof in the United States Mails, postage prepaid and addressed to his office at 1414 Three Penn Center Plaza, Philadelphia, Pennsylvania 19102; and three copies of the said "Petition" were served upon JOHN F. COWLEY, Esquire, Special Prosecutor, by depositing the same thereof in the

United States Mails, postage prepaid and addressed to his office at Law Offices Of VAN DER HIEL & COWLEY, Main & Wellsboro Streets, Mansfield, Pennsylvania 16933 (Phone 717-662-2157); and three copies of the said "Petition" were served upon FREDERICK D. LINGLE, Esquire, District Attorney of Clinton County, Pa., by depositing the same thereof in the United States Mails, postage prepaid and addressed to his office at 310 East Water Street, Lock Haven, Clinton County, Pennsylvania 17745.

June 23, 1982
Date

By George Miller
George Miller,
Petitioner
In Propria Persona
514 West Main Street
Lock Haven, Pa. 17745
Telephone: (717)-748-2768

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Centre :

Sworn to and subscribed before me
this 21st day of June, 1982.

Mary Ann Bjalone

Notary

MARY ANN BJALONE, Notary Public
State College, Centre County, Pa.
My Commission Expires March 23, 1935

My Commission Expires 1st Monday_____

_____

AFFIDAVIT OF SERVICE

GEORGE MILLER, being duly sworn according to law deposes and says that on June 23, 1982, forty/ONE copies, including the original, of the "PETITION FOR WRIT OF CERTIORARI" to the Supreme Court of Pennsylvania, In The UNITED STATES SUPREME COURT, captioned as GEORGE MILLER, Petitioner V. SUPREME COURT OF PENNSYLVANIA, E.D., et al., Respondents, were served upon the Clerk of the United States Supreme Court, by depositing the same thereof in the United States Mails, postage prepaid and addressed to his office at the Supreme Court of The United States, Washington, D.C. 20543

June 23, 1982
Date

By George Miller
George Miller,
Petitioner
In Propria Persona
514 West Main Street
Lock Haven, Pa. 17745
Telephone: (717)-748-2768

COMMONWEALTH OF PENNSYLVANIA :

:

COUNTY OF Centre :

Sworn to and subscribed before me this 21st

day of June, 1982.

Mary Ann Bjalme

Notary

My Commission Expires 1st Monday

APPENDIX A

Order of the Supreme Court of Pennsylvania Denying Petition for Allowance of Appeal

(Filed-March 25, 1982)

SUPREME COURT OF PENNSYLVANIA
Eastern District

DOCKET NO. 642 E.D. Misc. Docket 1981

At a Stated Term of the Supreme Court of Pennsylvania, in and for the Eastern District, held at City Hall, in the City of Philadelphia, on the twenty fifth day of March, one thousand nine hundred and eighty two.

Present:

Per Curiam

GEORGE MILLER,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

Appendix A

This is to advise you that the following Order* has been endorsed on the Petition for Allowance of Appeal, filed in the above captioned matter:

"March 25, 1982.

Petition Denied.

Per Curiam."

Marlene F. Lachman, Esq.
Prothonotary

---

*N.B. No opinion was filed by the Court.

APPENDIX B

Order endorsed on the Petition for Allowance of Appeal by the Supreme Court of Pennsylvania for the Eastern District

(Filed-March 25, 1982)

SUPREME COURT OF PENNSYLVANIA
Eastern District

DOCKET NO. 52 E.D. Allocatur Docket 1982

At a Stated Term of the Supreme Court of Pennsylvania, in and for the Eastern District, held at City Hall, in the City of Philadelphia, on the twenty fifth day of March, one thousand nine hundred and eighty two.

Present:

Per Curiam

GEORGE MILLER,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

(3a) Respondent.

Appendix B

This is to advise you that the following Order* has been endorsed on the Petition for Allowance of Appeal, filed in the above captioned matter:

"March 25, 1982.

Petition Denied.

Per Curiam."

Marlene F. Lachman, Esq.
Prothonotary

---

*N.B. No opinion was filed by the Court.

APPENDIX C

Rule Involved

Pennsylvania Rule of Criminal Procedure No. 133(B) "Private Complaints" provides as follows:

> (1) When the affiant is not a police officer as defined in Rule 51(C) and the offense(s) charged include(s) a Misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to the attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.
>
> (2) The form of the complaint shall be identical to that set forth in part (A) of this Rule, except that the following shall appear above the caption on the first page:
>
> PRIVATE COMPLAINT
>
> DISTRICT ATTORNEY'S OFFICE
>
> ☐ Approved
>
> ☐ Disapproved because: _____
>
> _____
>
> _____
>
> DATE SIGNATURE
>
> (3) If the attorney for the Commonwealth

(i) approves the complaint, he shall indicate his decision on the complaint form and transmit it to the issuing authority.

(ii) disapproves the complaint, he shall state his reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval.

(iii) does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with the issuing authority, noting thereon that a complaint is pending before the attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

Comment: The district attorney may 'transmit' the complaint to the issuing authority pursuant to subparagraph (B) (3) (i) by returning it to the affiant for delivery.

Rule 105 adopted Jan. 31, 1970, effective May 1, 1970; renumbered as Rule 133 and amended Sept. 18, 1973, effective Jan. 1, 1974; amended Jan. 23, 1975, effective Sept. 1, 1975.

Office - Supreme Court, U.S.
FILED
JUL 30 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-45

In The

SUPREME COURT OF THE UNITED STATES

_____ Term, 19__

GEORGE MILLER,

Petitioner,

vs.

SUPREME COURT OF PENNSYLVANIA, E.D., et al.,

Respondents.

SUPPLEMENT TO

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, E.D., et al.

George Miller,
Petitioner
In Propria Persona
514 West Main Street
Lock Haven, Pennsylvania 17745
Telephone: (717) 748-2768

APPENDIX D

Supplement to "Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania, E.D., et al, filed In The SUPREME COURT OF THE UNITED STATES on June 22, 1982.

Order of the Superior Court of Pennsylvania Affirming the Order of the Lower Court

(Filed-October 30, 1981)

SUPERIOR COURT OF PENNSYLVANIA
Philadelphia District

DOCKET NO. 1210 Philadelphia 1980

At a Stated Term of the Superior Court of Pennsylvania, in and for the Philadelphia District, held at 2044 Old Federal Courthouse, Ninth and Chestnut Streets, Philadelphia, Pennsylvania, on the fourth day of February, one thousand nine hundred and eighty one.

Present:

Honorable Richard B. Wickersham, Honorable Zoran Popovich, Superior Court Judges

Honorable G. Harold Watkins, Senior Judge (retired, on temporary judicial service)

Appendix D

J. 265/1981

COMMONWEALTH OF PENNSYLVANIA

V.

J. MICHAEL WILLIAMSON, ESQUIRE

Appeal of: George Miller

Appeal from the Order of Court of Common Pleas, Criminal Division of Clinton County at No. 242 of 1979.

PER CURIAM:

Order of the lower court affirmed.

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of CLINTON County be, and the same is hereby AFFIRMED.

Dated: October 30, 1981

MEMORANDUM OPINION:

Appendix D

On September 21, 1979, George Miller, appellant, appeared before Carl R. Hamberger, Justice of the Peace, Magisterial District No. 25-3-01 in Lock Haven, Pennsylvania and swore out a criminal complaint (private) against J. Michael Williamson, Esquire, also of Lock Haven, Pennsylvania alleging that the defendant had committed certain crimes in October and November 1975 including tampering with public records or information, obstructing administration of law or other governmental function, official oppression, and criminal conspiracy.

Pa. R. Crim.P. 133(B) entitled "Private Complaints" provides as follows:

> (1) When the affiant is not a police officer as defined in Rule 51(C) and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to the attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.

(2) The form of the complaint shall be identical to that set forth in part (A) of this Rule, except that the following shall appear above the caption on the first page:

PRIVATE COMPLAINT

DISTRICT ATTORNEY'S OFFICE

Approved

Disapproved because:_____

_____

_____

_____

DATE SIGNATURE

(3) If the attorney for the Commonwealth

(i) approves the complaint, he shall indicate his decision on the complaint form and transmit it to the issuing authority.

(ii) disapproves the complaint, he shall state his reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval.

(iii) does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with

the issuing authority, noting thereon that a complaint is pending before the attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

Comment: The district attorney may may 'transmit' the complaint to the issuing authority pursuant to subparagraph (B)(3)(i) by returning it to the affiant for delivery.

Rule 105 adopted Jan. 31, 1970, effective May 1, 1970; renumbered as Rule 133 and amended Sept. 18, 1973, effective Jan. 1, 1974; amended Jan. 23, 1975, effective Sept. 1, 1975.

J. Michael Williamson, Esquire, had been District Attorney for Clinton County in the year 1975. At the time of the filing of the criminal complaint, September 21, 1979, Martin A. Flayhart was District Attorney of Clinton County and he petitioned the court to have John F. Cowley, Assistant District Attorney of Tioga County named special prosecutor for and on behalf of the Commonwealth in the instant case. The Hon-

orable Harold B. Fink, Specially Presiding, signed such an order of court on November 13, 1979.

Special prosecutor Cowley reviewed the complaint and the background evidence and disapproved the same on the basis of insufficient evidence, said disapproval occurring January 14, 1980. Thereafter, George Miller, appellant, petitioned the court of common pleas to approve his private complaint and on March 3, 1980 a hearing was held before Judge Fink in Lock Haven, Pennsylvania, at which time and place George Miller, appellant, appeared, as did J. Michael Williamson, Esquire, and George Miller presented testimony and documentary evidence in support of his complaint.

By order of April 29, 1980, Judge Fink affirmed the disapproval of the private criminal complaint by the special prosecutor holding that the prosecutor has broad prosecutorial

discretion in passing upon private complaints. Judge Fink further found that it was difficult to conceive how any issuing authority could possibly find the criminal intent necessary to bind the defendant, J. Michael Williamson, Esquire, over as to any of the criminal charges set forth in the private complaint.

We have reviewed the record in this case, the opinion of Judge Fink, the brief submitted by George Miller as private prosecutor and appellant, and we find no abuse of discretion on the part of Judge Fink in his affirmance of the decision of the special prosecutor. The special prosecutor did not abuse his discretion in disapproving the private criminal complaint and Judge Fink did not abuse his discretion in reviewing the action taken by the special prosecutor. Commonwealth v. Eisemann, 276 Pa. Superior Ct. 543, 419 A.2d 591 (1980).

Appendix D
Order of the lower court affirmed.

APPENDIX E

Supplement to "Petition For A Writ of Certiorari To The Supreme Court of Pennsylvania, E.D., et al, filed In The SUPREME COURT OF THE UNITED STATES on June 22, 1982.

Order of the Superior Court of Pennsylvania Affirming the Order of the Lower Court

(Filed-December 29, 1981)

SUPERIOR COURT OF PENNSYLVANIA
Philadelphia District

DOCKET NO. 409 Philadelphia, 1981

At a Stated Term of the Superior Court of Pennsylvania, in and for the Philadelphia District, held at 2044 Old Federal Courthouse, Ninth and Chestnut Streets, Philadelphia, Pennsylvania, on the sixth day of November, one thousand nine hundred and eighty one.

Present:

Honorable Edmund B. Spaeth, Jr., Chief Judge

Honorable Phyllis W. Beck, Honorable Frank J. Montemuro, Jr.

Appendix E

J. 2007/81

COMMONWEALTH OF PENNSYLVANIA

VS.

J. MICHAEL WILLIAMSON

APPEAL OF GEORGE MILLER

Appeal from Order entered in the Court of Common Pleas, Criminal Division, of Clinton County at No. 292 of 1980

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of CLINTON County be, and the same is hereby AFFIRMED.

Dated: December 29, 1981

PER CURIAM OPINION:

Appellant attempted to bring private criminal complaints against a former District

Appendix E

Attorney for refusal to prosecute prior private criminal complaints filed against others by appellant. The current District Attorney refused to prosecute, and appellant pursued his right under Pa. R. Cr. 133(B) to submit the disapproved complaint to the Court of Common Pleas for review. The Court of Common Pleas disapproved the complaints, finding them without any legal basis for prosecution, and the complainant appealed.

Appellant has previously litigated the same question before this court. In Commonwealth v. Eisemann, 276 Pa. Super. 543, 419 A.2d 591 (1980), appellant herein sought reversal of the very action by the former district attorney which he has now sought to have prosecuted as criminal. The Court of Common Pleas and this court held that Mr. Williamson had acted completely within his auth-ority and in accordance with the law, and that ther-

had been no abuse of discretion.

We affirm the order of the lower court.